Slip Op. 03-59

UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE: HON. RICHARD W. GOLDBERG, SENIOR JUDGE

CORRPRO COMPANIES, INC., Plaintiff, v. UNITED STATES, Defendant.	Court No. 01-00745

[Plaintiff's motion for summary judgment is denied; Defendant's motion to dismiss for lack of jurisdiction is granted in part and denied in part, and Defendant's cross-motion for summary judgment is granted in part and denied in part.]

Dated: June 4, 2003

Simons & Wiskin (Jerry P. Wiskin and Philip Yale Simons) for Plaintiff.

Robert D. McCallum, Jr., Assistant Attorney General, United States Department of Justice; John J. Mahon, Acting Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice (Aimee Lee); Beth C. Brotman, Office of Assistant Chief Counsel, International Trade Litigation, United States Customs Service, Of Counsel, for Defendant.

OPINION

GOLDBERG, Senior Judge: This action arises from the Bureau of Customs and Border Protection's ("Customs") denial of Plaintiff's North American Free Trade Agreement ("NAFTA") claim and protest of classification filed on September 6, 2001. Plaintiff Corrpro

Companies, Inc. ("Corrpro") moves for summary judgment pursuant to USCIT R. 12(b) or R. 56. Defendant moves to dismiss for lack of jurisdiction and, in the alternative, cross-moves for summary judgment.

The Court has jurisdiction in this case under 28 U.S.C. § 1581(a). For the reasons that follow, Plaintiff's motion for summary judgment is denied. Defendant's motion to dismiss for lack of jurisdiction is granted in part and denied in part, and Defendant's cross-motion for summary judgment is granted in part and denied in part.

I. BACKGROUND

Plaintiff Corrpro is an importer of magnesium anodes. The subject merchandise was classified by Customs under subheading 8104.19.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"), as "Magnesium and articles thereof, including waste and scrap: Unwrought magnesium: Other" at the rate of 6.5% ad valorem. Under this subheading the merchandise was ineligible for NAFTA preferential treatment.

On May 17, 1993, Customs issued Headquarters Ruling Letter ("HRL") 557046 classifying the subject merchandise under subheading 8104.19.00, HTSUS. Under this subheading, the magnesium anodes were ineligible for NAFTA treatment. On August 16, 1999, Corrpro began importing magnesium anodes into the

United States under HTSUS 8104.19.00, according to Customs' classification. In the year following the time of entry, Corrpro did not file a claim for NAFTA preferential treatment. On June 30, 2000, Customs liquidated the subject merchandise. On September 12, 2000, Corrpro filed a protest under 19 U.S.C. § 1514(a)(2), asserting that the proper classification of its imported anodes was under HTSUS subheading MX 8543.38.00. Corrpro claims that its protest of September 12, 2000 was a joint protest for NAFTA preferential treatment and protest of classification and duty rates. On August 13, 2001, Customs denied the protest.

Corrpro filed a complaint with the Court of International Trade on September 6, 2001. In its complaint, Corrpro asserted that the Court has jurisdiction under 28 U.S.C. § 1581(a) because its post-entry claim constituted (1) a timely protest of classification, liquidation, and duty rates pursuant to 19 U.S.C. § 1514 and (2) a claim for NAFTA preferential treatment pursuant to 19 U.S.C. § 1520(d) or, in the alternative, 19 U.S.C. § 1520(c).

On October 10, 2001 Customs retracted HRL 557046 and reclassified the subject merchandise under HTSUS 8543.30.00 ("New Classification"). Customs issued its final notice of revocation of HTSUS 8104.19.00 on December 5, 2001. Under the New Classification, the subject merchandise was eligible for NAFTA

preferential treatment. Therefore, in response to Corrpro's claim, Customs agreed to stipulate to the classification of the subject merchandise under the New Classification at the applicable general rate of duty. Corrpro refused to agree with Customs' stipulation and proceeded with its complaint.

On June 27, 2002, Corrpro submitted the certificates of origin in connection with its September 6, 2001 claim for NAFTA preferential treatment.

II. STANDARD OF REVIEW

The threshold issue on appeal is whether the Court has jurisdiction to hear this case. See Everflora Miami, Inc., v. United States, 19 CIT 485, 885 F. Supp. 243 (1995). In deciding a USCIT R. 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the Court looks to whether the moving party challenges the sufficiency of the pleadings or the factual basis underlying the pleadings. In the first instance, the Court must accept as true all facts alleged in the non-moving party's pleadings. In the second instance, the Court accepts as true only those facts which are uncontroverted. All other facts are subject to fact-finding by the Court. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

III. DISCUSSION

Pursuant to 28 U.S.C. § 1581(a), Corrpro claims the Court has jurisdiction over this action commenced to contest the denial of a protest, in whole or in part, under 19 U.S.C. § 1520(d) or, alternatively, 19 U.S.C. § 1520(c).[1]

Customs concedes that the appropriate classification of the subject merchandise was under HTSUS 8543.30.00. Corrpro claims that its protest of September 12, 2000 was a post-entry NAFTA claim of Customs' final decision regarding "classification, rate, and amount of duties chargeable," under § 1520(d). Alternatively, Corrpro claims that the protest met the requirements of § 1520(c) requesting reliquidation based on Customs' mistake of fact or clerical error in reclassifying the magnesium anodes. Thus, under either § 1520(d) or § 1520(c), Corrpro asserts that the Court has jurisdiction pursuant to 28 U.S.C. § 1581(a).

In its motion for summary judgment, Customs argues that the Court lacks § 1581(a) jurisdiction in this matter because Customs

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[1] 19 U.S.C. § 1514(a) grants an importer 90 days from the date of notice of liquidation to file a protest challenging the classification and assessments of duties. In the absence of such a protest within the specified time period, Customs may reliquidate an entry under 19 U.S.C. § 1520(c) or 19 U.S.C. § 1520(d). Corrpro concedes that it was unable to file a claim within the timing requirements of 19 U.S.C. § 1514 and thus invokes the extensions provided by § 1520(d) or, alternatively, § 1520(c).

made no final decision in the protest denial. Thus, there was no decision for Corrpro to appeal to the Court. Customs also claims that the Court lacks jurisdiction over Corrpro's claim for NAFTA preferential treatment because Corrpro failed to file a timely claim. If the Court finds jurisdiction over Corrpro's NAFTA claim, Customs cross-moves for summary judgment on the basis of Corrpro's failure to comply with the requirements of a NAFTA claim – namely by failing to file certificates of origin with its protest.

The Court addresses Corrpro's § 1520(d) and § 1520(c) arguments individually.

A. The Court lacks jurisdiction over Corrpro's § 1520(d) claim due to Corrpro's failure to comply with the procedural requirements for filing a NAFTA preferential treatment claim.

We first address the issue of whether the Court has jurisdiction to consider the complaint as a protest for NAFTA preferential treatment filed under 19 U.S.C. § 1520(d).[2]

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[2] Section 1520(d) provides in pertinent part that:

> [n]otwithstanding the fact that a valid protest was not filed, the Customs Service may . . . reliquidate an entry to refund any excess duties . . . paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—
> (1) a written declaration that the good qualified under

Corrpro claims that the Court has jurisdiction to hear this case because its complaint was a protest for NAFTA preferential treatment filed pursuant to 19 U.S.C. § 1520(d). Corrpro concedes that it did not make its § 1520(d) petition for NAFTA treatment until after the merchandise was imported, nor did it within one year after the time of entry. Corrpro argues that they were precluded by law from claiming NAFTA preferential treatment until two years after the time of entry when Customs reclassified the subject merchandise. It claims that pursuant to a binding Customs ruling, they were required to enter the subject merchandise under HTSUS 8104.19.00, which was ineligible for NAFTA preferential treatment. Thus, it filed a post-liquidation protest pursuant to § 1520(d).

Customs claims that a § 1520(d) petition must precede a protest where no NAFTA claim was made at the time of the entry of the subject merchandise, citing Power-One, Inc. v. United States, 83 F. Supp. 2d 1300, Slip Op. 99-133 (Dec. 14, 1999). Customs argues that Power-One stands for the proposition that the Court of International Trade ("CIT") lacks jurisdiction if the NAFTA

> those rules at the time of importation
> (2) copies of all applicable NAFTA Certificates of Origin . . . and
> (3) such other documentation relating to the importation of the goods as the Customs Service may require.

19 U.S.C. § 1520(d).

claim was not protested prior to coming to the CIT. Id. at 964-65. In the alternative, Customs argues that assuming arguendo that Corrpro filed a NAFTA preferential treatment claim, Corrpro's claim was invalid since it did not include the certificates of origin, as required by § 1520(d). As a result, according to Customs, the Court does not have jurisdiction to hear this claim.

An importer may file a protest contesting the denial of a NAFTA preferential treatment claim at the date of entry pursuant to 19 U.S.C. § 1514(a). If no such claim was filed at the date of entry, the importer may file one within one year of the date of entry pursuant to 19 U.S.C. § 1520(d).

Customs reiterates these requirements in 19 C.F.R. § 181.23.[3] This section, which outlines the procedures for filing a claim for NAFTA preferential treatment, also requires the petitioning party to submit a copy of each certificate of origin.

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[3] Section 181.23(b) provides in pertinent part, that

> A. post-importation claim for a refund shall be filed by presentation of the following:
> (1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry covering the good;
> (2). . . a copy of each Certificate of Origin pertaining to the goods.

19 C.F.R. § 181.23.

Accordingly, a protest that is filed without the required documents is invalid. See Audiovox Corp v. United States, 8 CIT 233 (1984) (dismissing plaintiff's claim for duty-free treatment for lack of jurisdiction.). In Audiovox, the court determined that the plaintiff's request for duty-free treatment was invalid since the plaintiff failed to file the certificates of origin. Consequently, the court lacked jurisdiction over an invalid protest. "[T]he requirements of 19 U.S.C. § 1514 are conditions precedent for jurisdiction in this court under 28 U.S.C. § 1581(a)." Id. at 237. See also Power-One, 83 F. Supp. 2d at 965 (holding that the court lacked jurisdiction over plaintiffs' 19 U.S.C. § 1520(d) claim since the plaintiff's failed to file a valid protest against Customs' denial of their § 1520(d) claim). Power-One concluded that the plaintiffs' NAFTA claim was invalid, in part because the plaintiffs failed to respond to requests for specific documentation concerning the origin of the exports in their original claim for NAFTA preferential treatment, and therefore, the court lacked jurisdiction. Id.

Corrpro agrees that it did not send the certificates of origin with any of its of its § 1520(d) protests. Indeed, Corrpro filed its last § 1520(d) protest on June 6, 2001 but did not send the certificates of origin until June 27, 2002. Corrpro failed to follow the procedural requirements of 19 U.S.C. § 1520(d) and 19 C.F.R. § 181.23. Accordingly, the Court lacks

jurisdiction over Corrpro's § 1520(d) claim because the denials of petitions for NAFTA treatment are not protestable. See Audiovox, 8 CIT 236. Accordingly, Plaintiff's NAFTA preferential treatment claim is rejected for lack of jurisdiction.

B. Customs's reclassification of the subject merchandise was the result of a mistake of law, therefore rendering Corrpro's § 1520(c) claim inapplicable.

19 U.S.C. § 1520(c) allows an importer to protest an administrative decision of Customs if the decision is predicated upon a "clerical error, mistake of fact or other inadvertence" in any entry, liquidation, or other customs transaction.[4] As stipulated, the protest must be made within one year after the date of liquidation. All of Corrpro's protests were filed within one year of the date of liquidation. Therefore, the Court has jurisdiction to hear Corrpro's protest filed under § 1520(c).

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[4] Section 1520(c) provides in pertinent part that:

> Notwithstanding a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry or reconciliation to correct--
> (1) a clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in electronic transmission, not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the Customs Service within one year after the date of liquidation or exaction . . .

19 U.S.C. § 1520(c).

Section 1520(c) applies to mistakes of fact and does not apply to mistakes of law. Sunderland of Scot, Inc. v. United States, 2001 Ct. Intl. Trade LEXIS 114, Slip Op. 01-112 (Aug. 29, 2001). In Sunderland, Customs determined that the subject merchandise, pull-over coats, satisfied a test proving that the coats were waterproof. This determination was contrary to Customs' original determination and warranted reclassification of the merchandise. The Sunderland court held that the reclassification of this product constituted an error in the construction of law rather than an error in mistake of fact. The court explained the difference between a mistake of fact and a mistake of law:

> A mistake of fact occurs when a decision is based on a reasonable belief that a fact exists differently than in reality… [A] mistake of law occurs when the legal consequences of a given set of facts are incorrectly interpreted or anticipated." Id.

Thus, the Sunderland court determined that reclassification was a reinterpretation of a given set of facts. This reinterpretation resulted in a newly-determined legal consequence. Therefore, the reclassification was a mistake of law and § 1520(c) was inapplicable.

In the instant case, Customs reclassified the magnesium anodes because they determined that the subject merchandise was not unwrought. This determination was based on the reevaluation of the composition of the subject merchandise rather than any

mistake of fact, error, or inadvertence. Therefore, this reclassification, like the reclassification in Sunderland, was based on a prior misinterpretation of the contents of the merchandise. The Sunderland court determined that this kind of error is an error in the construction of law rather than a mistake of fact. Likewise, we hold here that Customs' reclassification of the subject merchandise was a mistake of law rendering § 1520(c) inapplicable to Plaintiff's case.

Therefore, Plaintiff's motion for summary judgment is denied and Defendant's cross-motion for summary judgment is granted on this issue.

IV. CONCLUSION

Plaintiff's motion for summary judgment on its appeal of Customs' protest denial is denied (1) for lack of subject matter jurisdiction under 19 U.S.C. § 1520(d) due to Plaintiff's failure to timely file certificates of origin and (2) since the reclassification of the subject merchandise was not a clerical error or mistake of fact as required under 19 U.S.C. § 1520(c). Accordingly, Defendant's motion to dismiss for lack of jurisdiction is granted in part and denied in part, and Defendant's cross-motion for summary judgment is granted in part and denied in part.

Richard W. Goldberg
Senior Judge

Date: June 4, 2003
New York, New York